IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5024 OF 2004
WITH
CRIMINAL APPLICATION NO.5025 OF 2004

Hiten Khatau ..Applicant
Vs.
M/s.Kotak Mahindra
Finance Ltd. & Anr. ..Respondents

...
Mr. Ganesh Gole Advocate for Applicant
Mr. D.M.Purandare i/b Mrs.Revati Mohite-Dere
for Respondent no.1.
Mr. Rajesh More A.P.P. for the State
...

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : AUGUST 17,2005

P.C.

1. Heard the learned advocate for the applicant, the learned advocate for the respondent no.1 and the learned A.P.P. for the State.

2. The applicant is seeking quashing of process issued by the learned Chief Judicial Magistrate in C.C.Nos.544 of 2003 and 545 of 2003. In the said case process is issued under Section 138 r.w. 141 of Negotiable Instruments Act. The applicant had preferred application before the learned Magistrate

for recall of process. The said application came to be rejected by order dated 27.8.2004. Being aggrieved by the said order, the applicant preferred revision before the Sessions Court i.e. Cri.Revision Application Nos. 194 of 2004 and 195 of 2004. In view of the decision of the Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal and ors.; [(2004) 7 S.C.C.338],** it is clear that a Magistrate does not have the power to recall the process. In this view of the matter, I am not inclined to interfere with the said order.

3. Revision preferred by the applicant came to be rejected by the learned Sessions Judge by order dated 7.10.2004 on the ground that it was not maintainable in view of the decision of the Supreme Court in the case of **Adalat Prasad (supra)**. However, for the reasons recorded in my order dated 13th June, 2005 in W.P.No. 213 of 2005 and dated 21st June, 2005 in Cri.Application No.550 of 2005, I am of the opinion that the applicant has an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, the order of the learned Sessions Judge being erroneous and incorrect, the said order

deserves to be set aside.

4. In view of the above, the order passed by the learned Sessions Judge dated 7.10.2004 being erroneous and incorrect is set aside and both the aforesaid revisions are restored to file. The learned Sessions Judge shall hear the necessary parties in the said revisions afresh and dispose of the same on merits as far as possible by 9th December, 2005. Interim stay granted by this Court shall stand extended upto 10th December, 2005. It is made clear that revisions shall be considered and decided in respect of the order of the Magistrate issuing process and not in respect of the order of the Magistrate rejecting the application for recall of process.

5. The learned advocate for the applicant states that copies of the said revisions will be served upon the learned advocate for the respondent no.1 within a week from today. Counsel for the parties shall appear before the concerned Sessions Court on 5th September, 2005.

6. Both the applications are disposed of.

[V.K.TAHILRAMANI,J.]